burden was upon the plaintiff to prove clearly and distinctly that a partial payment was made upon the note sought to be recovered, within six years from the commencement of the action. Failing in this, the jury should have been directed to find for the defendant. We are of opinion that the plaintiff's evidence was not sufficiently clear and unambiguous to authorize the jury to find that the payment was made upon the note in suit. The District Court erred in entering judgment upon the point reserved in favor of the plaintiff. The judgment should have been for the defendant, as there was no evidence of identity to submit to the jury.

The judgment of the District Court in favor of the plaintiffs is *reversed*, and judgment is here entered for defendant, with costs.

J. A. Phillips, for plaintiff in error.

J. M'Intyre for defendant in error.

In the Supreme Court of Pennsylvania, May, 1856.

FREDERICK GAUL *vs.* BENJAMIN R. WILLIS.

1. It is fully settled in Pennsylvania, that a vendee has a right to purchase a security at a greater discount than 6 per cent., but he must be a purchaser in good faith, and not participate in any contrivance to evade the statute against usury.
2. The difference between the English and the Pennsylvania statutes against usury stated.
3. Where A draws a promissory note in the usual form, to raise money by its sale, purporting to be "for value received," and B endorses the note to C, who sells it to D at a discount of one and one-half per cent. per month, the latter having no notice whatever, of the purpose for which the note was made, and having neither loaned nor intended to loan money on it to the maker or first endorser, A, cannot be heard even after a release, to give evidence to invalidate the security in the hands of D, a bona fide holder, on the ground of usury or failure in the original consideration.

The opinion, in which the facts appear, was delivered by

LEWIS, C. J.—Frederick Gaul, the defendant below, loaned his note to William C. Rudman, for the purpose of enabling the latter to raise money by the sale of it. The note was drawn in the usual form of negotiable instruments, and expressed on its face to have

been given for "value received," although there was in fact no debt due from Gaul to Rudman. Rudman endorsed the note and sold it to Drexel & Co. They in turn, disposed of it to Benjamin B. Willis, at a discount equal to one and a-half per cent. per month. Neither Drexel & Co., nor Willis, had any knowledge of the purpose for which the note was given. They had a right to put faith in the representation on the face of the paper, that it was given for a valuable consideration. As against the parties who made that representation, the note must be held to be as they represented it. This is a principle of equity applicable to all business transactions; but it is so indispensable, in the transfer of negotiable securities, that a party to such an instrument cannot be received, even after a release, to give evidence to invalidate it in the hands of a *bona fide* holder, on the ground of usury, or for any other cause touching the original consideration. *Walton* vs. *Shelby*, 1 T. R. 300; *Griffith* vs. *Redford*, 1 Rawle, 196. This brings us to the question: Is Benjamin B. Willis a *bona fide* holder? If he participated in any contrivance to evade the statute against usury, he would not be a purchaser in good faith. But we have already seen that he had no notice whatever, of the purpose for which the note was made. He neither loaned, nor intended to loan money to Rudman, or to Gaul. He had no transaction of any kind with them, or with either of them. His dealings were with Drexel & Co. There was no intention on the part of the latter to borrow, and no engagement to return the money received, or any part of it, or to pay any sum whatever for the use of it. Nor was there any intention on the part of Willis to lend money to them. It was a clear purchase of the security, and nothing else. Had he a right to purchase it at a greater discount than six per cent.? That he had was fully settled so long ago as 1785. *Wyckoff* vs. *Loughead*, 2 Dallas, 92; *Musgrave* vs. *Gibbs*, 1 Dallas, 216. Although the period of credit given in the instrument is usually spoken of in fixing upon the discount, it is not the only element that enters into the calculation. The value of the security is determined by the present responsibility of the parties bound for it, the probabilities of their continued ability to pay, and their character for punctuality in meeting their engage-

ments. As the parties to the sale of the security were competent to manage their own affairs, that agreement, fixing the value of the note, when fairly made, is as binding as any other contract. It is true that if the note was absolutely void, there might be an insuperable obstacle to a recovery on it, however fairly acquired. But in this particular the English statutes against usury differ from our own. The former declared that all securities made in violation of them were "utterly void;" 13 Eliz. cap. 8; 3 Hen. vii. c. 5; 13 Geo. 3 c. 63. The latter contains no such provision. The result was that the English courts were bound to declare that all such securities were absolutely void even in the hands of innocent purchasers. But in this State the law has always been that even between the original parties such securities are valid for the real debt and legal interest. The excess cannot be recovered by one who participated in the contrivance to evade the statute, because he has no right to recover at law what the law prohibits him from contracting for or receiving. But as an innocent purchaser of such a security violates no law, he is of course entitled to recover the amount which, on the face of the instrument, appears to be due. The District Court was therefore correct in giving judgment for the plaintiff.

Judgment affirmed.

RECENT ENGLISH DECISIONS.

Court of Queen's Bench, Hilary Term,—January, 1856.

HAWKINS *vs.* TWYZILL.

The rule which deprived the seamen of wages if no freight was earned, does not apply to the master of a ship; and therefore, where a ship was lost, the administratrix of the captain was entitled to maintain an action for wages for the period of his service before the loss.

This was an action by the plaintiff, as administratrix, against the owner of the ship Britannia for wages due to the deceased as captain. The defendant paid 12*l.* into court. On the trial, before Crowder, J., at the Summer Assizes at Durham in 1855, it appeared that the deceased was engaged for the voyage at 10*l.* per month, and